



The Confederated Tribes of the Colville Reservation
P.O. Box 150, Nespelem, WA 99155

(509) 634-2200
FAX: (509) 634-4116



Friday, April 22, 2016

Maia Bellon, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

ATTN: Water Quality Program
swqs@ecy.wa.gov
Becca Conklin

RE: Comments on the State's 2016 Draft Rule for Human Health Criteria and Implementation Tools in Washington State Water Quality Standards

Dear Director Bellon,

The Confederated Tribes of the Colville Reservation (CTCR) have worked with the state of Washington and the US Environmental Protection Agency for many years to support water quality standards that protect the health of tribal people and respect the rights to tribal harvest of fish and shellfish guaranteed by various treaties, agreements, and court decisions. In February 2016, Department of Ecology proposed a second draft rule for human health criteria and implementation tools, and we wish to offer the following comments on the state's proposed rule.

Overall, the proposed state rule falls short of the stated goal of protecting people who consume fish and shellfish. The CTCR supports and endorses a set of comprehensive comments submitted by the Northwest Indian Fisheries Commission to Ecology this month which address numerous shortcomings of the proposed rule. Alternatively, the CTCR wishes to express our support for the more protective draft rule for human health criteria applicable to Washington State, issued by the U.S. Environmental Protection Agency on September 14, 2015.

The harvest and consumption of fish and in some cases shellfish remains at the heart of tribal communities, and is a cultural, nutritional, health, and economic necessity as well as a treaty right. The proposed FCR of 175 g/day is low compared to fish consumption rates at many tribes. Neither does it consider current suppression of fish consumption or heritage consumption rates. Developing human health criteria based on an average fish consumption rate also ignores highly exposed populations such as the tribes. Although the proposed rate is an increase from the current level in the state standards, other provisions of the rule proposed by the Department of Ecology serve to diminish the protective benefit of a higher fish consumption rate.

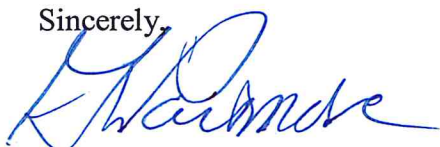
To illustrate the point of the proposed fish consumption rate being low in comparison with that of tribes, the CTCR completed an extensive consumption and resource use survey for the

Colville Indian Reservation with EPA, Westat, and Environment International in June 2012ⁱ. The results of this study indicate that Tribal Members who regularly consume fish eat an average of 384 grams per day at the 90th percentile, and the 90th percentile of all adults who live on the Colville Reservation eat 394 grams of fish per day. Based on these results, the Colville Business Council has determined that maintaining water quality to ensure a fish consumption rate of 400 grams per day would protect the vast majority of persons residing on the Colville Indian Reservation and provide a minimal subsistence rate of consumption for Tribal Members.

Other human health criteria proposed by Ecology do not incorporate best available science and fail to account for other sources of toxic chemicals. Again we recommend adoption of the criteria proposed by the EPA, which are significantly different for several key factors in the calculation of criteria that protect the designated uses. By example, for calculating criteria for water quality standards for all non-carcinogens, the state proposes to adopt a Relative Source Contribution (RSC) value of 1.0 (100%). The updated national water quality criteria for RSC is 0.2 (20%). Applying an RSC of 1.0 demonstrates Ecology's selective adoption of specific updates to national water criteria that consistently tend toward higher (less protective) chemical criteria. The state also proposes to selectively adopt water quality criteria for bioaccumulation factors; body weight, and drinking water intake that systematically drive standards toward higher chemical criteria. Unacceptably, the state's proposal would allow the criteria for several highly toxic chemicals including PCBs, arsenic, and dioxin to remain at status quo or become weaker, that is, less protective. The CTCR agrees with the Northwest Indian Fisheries Commission that the state's proposed implementation tools should be adjusted to support accountability and attainment of water quality standards, and not serve to help dischargers avoid compliance.

Washington State is required to meet the provisions of the Clean Water Act to preserve the beneficial uses of water, including fishing, a use central to Native American cultures and populations within the state. The public health protections encompassed by these standards should protect not just Native Americans but everyone in Washington who eats fish. The proposed rules by the state of Washington do not achieve these requirements and will result in continued suppression of fish consumption by tribal Members who fish Washington waters.

Sincerely,



Gary W. Passmore
Director
Office of Environmental Trust

CC

Lorraine Loomis, Chair; Northwest Indian Fisheries Commission
Dennis McLerran, EPA Region 10 Administrator
Dan Opalski, EPA Region 10 Director for the Office of Water and Watersheds

ⁱ Upper Columbia River Site Remedial Investigation and Feasibility Study Tribal Consumption and Resource Use Survey Final Report. June 22, 2012.